

Medicare Managed Care Manual

Chapter 15 - Intermediate Sanctions

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10 - Types of Intermediate Sanctions

(Rev. 37, 10-31-03)

In general, CMS may impose the following intermediate sanctions on Medicare+Choice (M+C) organizations that have contracts in effect:

- Civil Money Penalties (CMPs) *(In accordance with [§1128A](#) (other than subsections (a) and (b)) of the Act);*
- Suspension of enrollment of Medicare beneficiaries;
- Suspension of payment to the M+C organization for Medicare beneficiaries who enroll; and
- Suspension of marketing activities to Medicare beneficiaries for the M+C plan subject to the intermediate sanctions.

While there are separate requirements regarding the imposition of CMPs, it is important to recognize that CMPs are but one of the four types of intermediate sanctions available to CMS.

20 - General Basis for Imposing Intermediate Sanctions on M+C Organizations

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The CMS may impose certain intermediate sanctions for the following violations.

The M+C Organization:

- Fails substantially to provide, to an M+C enrollee, medically necessary services that the organization is required to provide (under law or under the contract) to an M+C enrollee, and that failure adversely affects (or is substantially likely to adversely affect) the enrollee;
- Imposes on M+C enrollees premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under [§1854](#) of the Social Security Act (the Act) and the Federal Regulations at [42 CFR 422 Subpart G](#);
- Expels or refuses to re-enroll a beneficiary in violation of the provisions of this part;
- Engages in any practice that could reasonably be expected to have the effect of denying or discouraging enrollment of individuals whose medical condition or history indicates a need for substantial future medical services;
- Misrepresents or falsifies information that it furnishes:
 - i. To CMS; or
 - ii. To an individual or to any other entity.
- Fails to comply with the requirements of Federal Regulations at [42 CFR 422.206](#), which prohibits interference with practitioners' advice to enrollees;
- Fails to comply with Federal Regulations at [42 CFR 422.216](#), which requires the organization to enforce the limit on balance billing under a private fee-for-service plan;
- Employs or contracts with an individual who is excluded from participation in Medicare under [§1128](#) or [§1128A](#) of the Act (or with an entity that employs or contracts with such an individual) for the provision of any of the following:
 - i. Health care;
 - ii. Utilization review;
 - iii. Medical social work; and

iv. Administrative services.

For the violations described above, CMS's intermediate sanction authority is limited to imposing those intermediate sanctions listed in the Federal Regulations at [42 CFR 422.750\(a\)\(2\) through \(4\)](#) - suspension of marketing, enrollment and payment. For these violations, the DHHS/OIG - and not CMS - independently maintains authority to impose CMPs, in addition to sanctions that CMS may impose. *Like the 752(a) violations, OIG, not CMS, may impose a CMP for the contract violations described in the Federal Regulations at [42 CFR 422.510\(a\)\(4\)](#), where violations involve fraudulent or abusive activities. The process that OIG adheres to in imposing its CMPs is described at [§1128A](#) (other than subsections (a) and (b)) of the Act.*

30 - Imposing Sanctions for Specific M+C Contract Violations

(Rev. 19, 02-28-03)

As described earlier, CMS may impose certain intermediate sanctions, including CMPs, on M+C organizations for the same reasons that we can terminate an M+C organization's contract. Federal Regulations at [42 CFR 422.510\(a\)\(1\) through \(a\)\(12\)](#) permits CMS may terminate an M+C organization's contract or impose intermediate sanctions if the Agency determines:

- The M+C organization has failed substantially to carry out the terms of its contract with CMS;
- The M+C organization is carrying out its contract with CMS in a manner that is inconsistent with the effective and efficient implementation of this part;
- CMS determines that the M+C organization no longer meets the requirements of this part for being a contracting organization;
- The M+C organization commits or participates in fraudulent or abusive activities affecting the Medicare program, including submission of fraudulent data (as mentioned above, only OIG can impose a CMP for this violation);
- The M+C organization experiences financial difficulties so severe that its ability to make necessary health services available is impaired to the point of posing an imminent and serious risk to the health of its enrollees, or otherwise fails to make services available to the extent that such a risk to health exists;
- The M+C organization substantially fails to comply with the requirements of the Federal Regulations at [42 CFR 422 Subpart M](#) of this part relating to grievances and appeals;
- The M+C organization fails to provide CMS with valid encounter data as required under Federal Regulations at [42 CFR 422.257](#);

- The M+C organization fails to implement an acceptable quality assessment and performance improvement program as required under Federal Regulations at [42 CFR 422 Subpart D](#) of this part;
- The M+C organization substantially fails to comply with the prompt payment requirements in the Federal Regulations at [42 CFR 422.520](#);
- The M+C organization substantially fails to comply with the service access requirements in the Federal Regulations at [42 CFR 422.112](#) or the Federal Regulations at [42 CFR 422.114](#);
- The M+C organization fails to comply with the requirements of the Federal Regulations at [42 CFR 422.208](#) regarding physician incentive plans; or
- The M+C organization substantially fails to comply with the marketing requirements in the Federal Regulations at [42 CFR 422.80](#).

Suspension of payment is not an available intermediate sanction authority for violations described in the Federal Regulation at 42 CFR 422.510(a). Thus CMS may only impose the following:

- Suspension of enrollment of Medicare beneficiaries;
- Suspension of all marketing activities to Medicare beneficiaries for the M+C plan subject to the intermediate sanctions; and
- CMPs, if the deficiency on which the sanction determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more M+C enrollees, the amount of the CMS-imposed CMP is \$25,000 for each determination. For each week that a deficiency remains uncorrected after the week in which the M+C organization receives CMS's notice of the determination to impose a CMP, CMS may further impose CMPs in the amount of \$10,000.

Exception

The DHHS/OIG alone may impose CMPs for M+C contract violations where violations involve fraudulent or abusive activities. See Federal Regulations at [42 CFR 422.756\(f\)\(3\)](#) and Federal Regulations at [42 CFR 422.510\(a\)\(4\)](#).

40 - CMPs for M+C Organizations That Improperly Terminate the M+C Contract

(Rev. 19, 02-28-03)

Under §623 of the Benefits Improvement and Protection Act of 2000 (BIPA), when CMS determines that an M+C organization terminates its M+C contract in a manner that violates M+C termination requirements described in the Federal Regulations at

[42 CFR 422.512](#), CMS may levy a CMP of \$100,000 or higher as determined by the Secretary.

50 - CMS Process for Suspending Marketing, Enrollment, and Payment

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If CMS determines that an M+C organization has acted or failed to act, as specified above under Federal Regulations at [42 CFR 422.752](#), CMS sends a written notice to the M+C organization stating the nature and basis of the proposed sanction, and also sends the DHHS/OIG a copy of the notice. The M+CO has 15 days to respond to the notice of intent to impose sanctions; otherwise the sanction(s) go into effect.

Upon receipt of the sanction notice, the M+CO has several options:

- The M+C organization may request an additional 15 days to respond, which is granted at the CMS's discretion. The request must provide a credible explanation of why additional time is necessary and must be received by CMS before the 15-day period expires. The CMS does not grant an extension if it determines that the M+C organization's conduct poses a threat to an enrollee's health and safety.
- The M+C organization may request informal reconsideration of the matter by a CMS official not involved in the original determination. The reconsideration includes a review of the evidence and a written decision that affirms or rescinds the original determination. If CMS's original determination is **rescinded** by the reconsideration official, the intermediate sanction process terminates.

If the M+C organization requests that CMS reconsider its original determination and CMS **affirms** this determination in accordance with the informal reconsideration process described above, the sanction is effective on the date specified in the notice of CMS's reconsidered determination. However, if CMS determines that the M+C organization's conduct poses a serious threat to an enrollee's health and safety, CMS may make the sanction effective on a date before issuance of CMS's reconsidered determination.

- If the M+C organization does not seek to have CMS reconsider its decision, a sanction is effective 15 days after the date that the organization is notified by CMS of its decision to impose the sanction. The M+C organization must submit a corrective action plan (CAP) that includes a timetable for completion. The purpose of the CAP is to explain to CMS how the sanctionable action will be corrected and avoided in the future

The CMS-imposed intermediate sanctions remain in effect until CMS notifies the M+C organization that CMS is satisfied that the basis for imposing the sanction has been corrected and is not likely to recur. *The CMS notifies the DHHS/OIG when CMS reverses or terminates a sanction.*

The process that CMS invokes for imposing CMPs, as explained in the Federal Regulations subsection at [42 CFR 422.756](#) is described at [§1128A \(other than subsections \(a\) and \(b\)\)](#) of the Act.

60 - Contract Termination by CMS

(Rev. 19, 02-28-03)

In addition to or as an alternative to freezing marketing, enrollment or suspending payments to a sanctioned M+C organization, CMS may decline to authorize the renewal of an organization's contract in accordance with the Federal Regulations at [42 CFR 422.506\(b\)\(2\) and \(b\)\(3\)](#), or terminate the M+C organization's contract in accordance with Federal Regulations at [42 CFR 422.510](#).